

# **MEMBERS OF THE COMMISSION ON CIVIL RIGHTS**

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## **HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE EIGHTY-FIFTH CONGRESS SECOND SESSION**

**ON**

**JOHN A. HANNAH, OF MICHIGAN, TO BE A MEMBER OF THE  
COMMISSION ON CIVIL RIGHTS**

**JOHN S. BATTLE, OF VIRGINIA, TO BE A MEMBER OF THE  
COMMISSION ON CIVIL RIGHTS**

**DOYLE ELAM CARLTON, OF FLORIDA, TO BE A MEMBER  
OF THE COMMISSION ON CIVIL RIGHTS**

**REV. FATHER THEODORE M. HESBURGH, OF INDIANA, TO  
BE A MEMBER OF THE COMMISSION ON CIVIL RIGHTS**

**ROBERT G. STOREY, OF TEXAS, TO BE A MEMBER OF THE  
COMMISSION ON CIVIL RIGHTS**

**J. ERNEST WILKINS, OF ILLINOIS, TO BE A MEMBER OF  
THE COMMISSION ON CIVIL RIGHTS**

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**FEBRUARY 24, 1958**

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# MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

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MONDAY, FEBRUARY 24, 1958

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D. C.*

The committee met, pursuant to call, at 2:45 p. m., in room 424, Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, McClellan, Ervin, Carroll, Jenner, and Dirksen.

Also present: Senators McNamara (Michigan), Robertson (Virginia), and Yarborough (Texas); Robert Young, counsel.

Chairman EASTLAND. Senator McNamara, proceed.

Senator McNAMARA. I want to thank you, Chairman Eastland, for the privilege of being allowed to appear today. I will be very brief. I know you have much business to transact.

I appear here to urge that your committee promptly endorse the nomination of Dr. Hannah, of Michigan State University, to this important Commission. Dr. Hannah has been called upon many times for high public service, and I know he is in every way qualified to serve on this Commission.

Thank you.

Chairman EASTLAND. Thank you, sir.

Senator Robertson.

Senator ROBERTSON. Mr. Chairman and gentlemen of the committee, all of you, of course, will recall that I voted against the civil rights bill. I said at the time I did not think it was necessary, I did not think the creation of this Commission was necessary, and I have not changed my opinion on that.

But if you are going to have a commission, and the law says you are going to have one, I just wanted to confirm what I put on the card you sent me, that I thought our distinguished Virginian and former Governor, John S. Battle, would serve most acceptably on this Commission, and I am sure there will be no objection raised here today against him.

I am sure that the members of the committee already know him as a national figure so well that they realize the quality of his selection, but as a personal friend and being proud of my fellow countryman, I wanted to come before you and again say that it pleases me to see him nominated for this position.

Chairman EASTLAND. Thank you, Senator.

Senator Dirksen.

Senator DIRKSEN. Mr. Chairman, I would like to say a word on behalf of J. Ernest Wilkins of Chicago, also a Presidential appointee to this Commission.

I have known Mr. Wilkins a long time. He has been variously a candidate for the judiciary of my State. He is presently serving as Assistant Secretary of Labor in the field of international affairs.

I regard him by all odds as one of the ablest lawyers in our State and, above all else, a truly brilliant scholar with a brilliant family, who will grace this Commission with great distinction.

Senator JENNER. Mr. Chairman.

Chairman EASTLAND. Senator Jenner.

Senator JENNER. I would like to speak on behalf of Father Theodore M. Hesburgh, of Indiana. He is the head of Notre Dame University, one of our great universities. I am sure all of you folks who have had experience in football have heard of Notre Dame.

I am sure, Mr. Chairman, that Father Hesburgh will bring great dignity to this Commission, and I am very happy and proud to see a man of his caliber and understanding on this important Commission.

Chairman EASTLAND. Thank you, Senator.

Senator YARBOROUGH?

Senator YARBOROUGH. Mr. Chairman, I want to present to the committee Robert G. Storey, of the Southern Methodist School of Law, a distinguished Texan, a distinguished American. It has been my privilege to be personally acquainted with him for some 29 years, since he was a debate coach while I was on the Tyler High School debating team.

He has gone from Tyler to Dallas. He has served as president of the American Bar Association. He has founded Southern Methodist University Southwestern Law Foundation, the first foundation of its kind actually to go into operation in the United States, where they have built an international student exchange specializing in Latin American law.

He was a voluntary citizen soldier in World War II, though over age, of course, for any mandatory service. He was deputy intelligence officer for the Mediterranean theater of war for all the Allied Forces, giving particular attention to the air raids on the Ploesti, Rumania, oilfields.

After that he was Justice Jackson's chief assistant in the prosecution of the major war criminals in the Nürnberg trials. In both civilian and military life, in legal and educational fields, he offers an experience which is hard to equal by any other man in our State.

I commend him to your committee.

Chairman EASTLAND. Thank you, Senator.

The Chair will read into the record a letter dated February 24, 1958, from Senator George Smathers which is addressed to the chairman of the Judiciary Committee:

I regret that, because of other official duties, it is not possible for me to be personally present at the hearings scheduled today on the nomination of Hon. Doyle Elam Carlton for appointment as a member of the Commission on Civil Rights and would like to take this opportunity to make known to you and the members of your committee my views with respect to this nomination.

It has been my pleasure to know Governor Carlton for many years. Ours is a close, personal friendship which has stood the test of time. Without doubt, he is a gentleman of the highest character and unquestioned integrity. He is a man of courage and outstanding ability.

As Governor of our State of Florida, as a member of the Florida State Legislature, plus his many outstanding services rendered in various civic activities in the State, he has deservedly established a monument of lasting appreciation by the people of Florida. As a lawyer he enjoys a reputation of the highest standing and esteem among the members of the bar. He is truly a credit to his profession.

I firmly believe that no one could be found who would more conscientiously serve and be more faithful to the duties of the office as a member of the Civil Rights Commission than Governor Carlton. I was particularly pleased at the fine selection the President made in nominating such an outstanding man to this position of high trust and responsibility. Without reservation I highly recommend him to you and to the members of your committee.

I sincerely trust that his nomination will be reported out promptly and favorably.

With kindest regards,

Sincerely yours,

GEORGE SMATHERS.

Dr. Hannah, you have a statement?

### STATEMENT OF JOHN A. HANNAH, NOMINATED TO BE CHAIRMAN OF THE CIVIL RIGHTS COMMISSION

Mr. HANNAH. Senator Eastland and members of the committee, on behalf of all the members of the Commission on Civil Rights, I would like to make a brief introductory statement. With your permission, I would briefly review the chronological history of the Commission and its activities up to now.

As you know, Public Law 85-315 establishing the Commission was enacted on September 9, 1957. On November 7, the President announced the appointment of the six members of the Commission under the chairmanship of former Justice Stanley F. Reed, and a meeting was scheduled for December 9.

On December 2, Justice Reed submitted his resignation and the Commission's original meeting was postponed until January 3.

On December 23, the President appointed Doyle E. Carlton, former Governor of Florida, to the vacancy, and subsequently designated me as Chairman; and on January 4 designated Dean Robert G. Storey as Vice Chairman.

I should like to introduce the members of the Commission: Vice Chairman Robert G. Storey, dean of the Law School of Southern Methodist University of Dallas, Tex., and former president of the American Bar Association.

John S. Battle, former Governor of Virginia, of Charlottesville, Va.

Father Theodore M. Hesburgh, president of Notre Dame University, of South Bend, Ind.

J. Ernest Wilkins, Assistant Secretary of Labor, of Chicago, Ill., now of Washington.

Doyle E. Carlton, former Governor of Florida, of Tampa, Fla.

And I am John A. Hannah, president of Michigan State University of East Lansing, Mich.

The Commission has held four meetings: on January 3, 11, and 25, and this morning, February 24. Discussion at the early meetings was primarily devoted (1) to reviewing the qualifications of various persons under consideration for recommendation to the President for appointment to serve as staff director for the Commission; (2) to making arrangements for the administrative operations of the Commission's offices; and (3) to planning in general terms for the Commission's carrying out of its duties under Public Law 85-315.

This Commission is pleased to introduce to you this afternoon the man who, upon the unanimous recommendation of the Commission, was appointed on February 18 by the President to serve as our staff director. He is an eminent attorney, former attorney general of his

State, who was first suggested to the Commission upon inquiry by the Council of State Governments.

The Commission has moved slowly in finally arriving at a final recommendation for this important position because we have all felt that it was of first importance that we all agree upon a man of pre-eminent qualifications and experience, and it is a pleasure on behalf of all of our Commission to introduce, who is in the audience, Mr. Gordon Tiffany of Concord, N. H.

In order to reduce costs of operation and to promote efficiency, the Commission has made arrangements for the General Services Administration to perform administrative services for the Commission. The Commission has employed a secretary for the Commission and an office staff of two people to handle routine correspondence, arrange for space and equipment to permit the rapid implementation of the work of the Commission just as soon as the new staff director is confirmed by the Senate permitting him to assume his duties.

As you know, since no provision for financing the work of the Commission has been made, the President allotted \$200,000 from his emergency fund to permit the interim financing of our work. The Commission has requested a supplemental appropriation for that amount to reimburse the President's emergency fund, and has submitted a request for an appropriation for fiscal year 1959.

On behalf of my colleagues on the Commission, I should like to conclude these remarks by indicating that no member of this Commission sought membership on it. I believe that my experience and attitude is typical of the reaction of each of us. When first approached, I could think of a very considerable number of reasons why I should not undertake this assignment. Upon reflection, however, it appeared clear to me that few if any problems facing our country are of greater importance than the problem of civil rights and compatible relationships between all of the races and creeds which constitute America.

We feel that this problem is important, both from the standpoint of domestic tranquility and because of the profound effect it has in our relationships with the peoples of the rest of the world. We fear that too many people in our country labor under the misapprehension that either this Commission is charged with the responsibility for enforcing integration, or that it is charged to deal with all facets of the problems which have developed or might develop with reference to economic, social, religious, or other possible forms of discrimination.

Section 104 of the act provides that this Commission is first empowered to investigate the deprivation of the rights of citizens of the United States to vote by reason of their color, race, religion, or national origin.

Second, to study and collect information relating to the legal developments which constitute a denial of equal protection of the laws under the Constitution.

And the third duty requires the appraisal of the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

The Commission is authorized to submit to the President interim reports and requires a final report no later than 2 years from the date of the enactment of the law.

This Commission hopes that it may have the judgment, the guidance, and the good fortune to be able to make a useful contribution to our

country. It is willing to try to do so, try to do the best of which it is capable, and now submits itself to you for your consideration.

Sir, Governor Battle and Dean Storey have particularly urgent commitments for tomorrow, as have Father Hesburgh and Governor Carlton, and they therefore request that, if agreeable to you, you give their nominations priority of consideration.

Chairman EASTLAND. Senator Ervin?

Senator ERVIN. I do not believe you quite touched on this, Dr. Hannah, but according to my way of thinking, one of the most serious questions involved in this field is the relation of the Federal Government to the States.

I know that the overall bill which was introduced at the last session or last year and considered, would have virtually destroyed, as I see it, the rights of the States to continue to act in this field, and would put them under the supervision of a nonelective member of the Cabinet. It seems to me that one of the serious questions you all have to study and confront as a commission is to see what the relation of the Federal Government is with respect to the States, as well as these other matters which you mentioned.

Mr. HANNAH. I think we agree with that, Senator.

Senator ERVIN. That is all.

Chairman EASTLAND. Governor Battle?

Governor Battle, you are the former Governor of the State of Virginia.

#### STATEMENT OF JOHN S. BATTLE, NOMINATED TO BE A MEMBER OF THE CIVIL RIGHTS COMMISSION

Mr. BATTLE. Yes.

Chairman EASTLAND. You are a lawyer.

Mr. BATTLE. Yes.

Chairman EASTLAND. How long have you been practicing law?

Mr. BATTLE. Since 1914, sir.

Chairman EASTLAND. What do you consider your duties?

Mr. BATTLE. As a member of this Commission?

Chairman EASTLAND. Yes.

Mr. BATTLE. My analysis of the act is that it is to a very large extent factfinding. There are three provisions which have just been read by the Chairman.

The first is clearly, I think, with reference to voting. The second one asks for the analysis of laws, and so forth, relating to the subject under discussion.

Chairman EASTLAND. It says—

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution.

Mr. BATTLE. Yes.

Chairman EASTLAND. What does that mean?

Mr. BATTLE. Legal developments, so far as I can understand, are probably the decisions of the Supreme Court and the lesser courts, and it is a denial of the protection of the laws under the Constitution.

Chairman EASTLAND. That is State action, is it not?

Mr. BATTLE. I imagine that is what it is aimed at, sir.



Chairman EASTLAND. Is that your judgment of what it means as a lawyer?

Mr. BATTLE. I think it means that, and I think it would also mean that if there are any legal developments in the Federal structure, that we should draw attention to that.

Chairman EASTLAND. Yes.

Now, suppose that acts of private individuals would deny a person the equal protection of the law. In your judgment would the Commission have any jurisdiction?

Mr. BATTLE. No, it would not, in my judgment.

Chairman EASTLAND. As Dr. Hannah said, the Commission has had four meetings. What have you discussed at those meetings?

Mr. BATTLE. The first three meetings were largely taken up in discussions of executive directives and personnel, and a great many people were discussed.

Chairman EASTLAND. Have you discussed any investigations?

Mr. BATTLE. No, sir.

Chairman EASTLAND. That has never been mentioned?

Mr. BATTLE. No, sir; not that I recall. I was unable to be present at one meeting, but I am advised that nothing of that kind came up.

Chairman EASTLAND. Senator Ervin?

Senator ERVIN. Governor, this is a rather broad field, the question of the equal protection of the law. As I recall, in *Corpus Juris Secundum* it takes approximately 250 pages of very small type to merely enumerate the different subjects which have been held by various courts to come within the purview of the equal protection of the law. In other words, the equal protection of the law is concerned more or less with everything within a State or any of its political subdivisions, any area in which it acts, does it not?

Mr. BATTLE. Yes.

Senator ERVIN. I would just like to say that Governor Battle is the only appointee to the Commission whom I have had the privilege of knowing personally, and I consider him one of the Nation's outstanding citizens.

Chairman EASTLAND. He certainly is.

Mr. BATTLE. Thank you, Senator.

Chairman EASTLAND. Senator Carroll?

Senator CARROLL. Governor, did anyone ask you your views before you accepted this appointment?

Mr. BATTLE. No, sir. I think I might say, Senator, without divulging any confidence, because I asked if I might quote it, the assistant to the President who approached me and asked me to serve stated that the President was anxious to have a Commission reflecting various views from various sections of the country—the North, the South, the East, and the West—and he felt that it might be helpful if there was some member of the Commission who had—and I think I quote him verbatim—the strong southern views which I entertain.

I asked if I might quote him to that effect, and I was told I might do so. That is the only reference to my views made, and that was in the conversation after I had been invited to serve.

Senator CARROLL. That answers my question, Mr. Chairman.

Thank you, Governor.

Chairman EASTLAND. Senator Jenner?

Senator JENNER. I have no questions, Mr. Chairman.

Chairman EASTLAND. Senator Dirksen?

Senator DIRKSEN. I was just going to observe, Governor, that there are strong southern views and strong views all around on this subject.

Mr. BATTLE. Yes. I quite appreciate that, sir.

Chairman EASTLAND. He knows more about it than most anybody else.

Here is a letter, dated February 24, 1958, to be placed in the record, from Senator Homer E. Capehart:

DEAR MR. CHAIRMAN: I am very grateful for the opportunity to present to your committee a statement of my unequivocal recommendation of the Reverend Theodore M. Hesburgh, the distinguished president of the University of Notre Dame, as a member of the Commission on Civil Rights.

Father Hesburgh has made an outstanding record as the president of one of the great educational institutions of the Nation and it is my opinion that there could have been no better choice than he as a member of the Commission to deal with one of the important social problems of our day.

Sincerely,

HOMER E. CAPEHART.

Senator DIRKSEN. Mr. Chairman, may I offer for the record that I have a modest friendship and acquaintanceship with Father Hesburgh, and I fully concur in and share the opinions expressed about him and his great contributions as the president of a great institution and as a citizen.

Chairman EASTLAND. Robert G. Storey, of Texas.

Sit down, Doctor.

How long have you been practicing law, Dr. Storey?

#### STATEMENT OF ROBERT G. STOREY, NOMINATED TO BE A MEMBER OF THE CIVIL RIGHTS COMMISSION

Mr. STOREY. Since late 1914, sir.

Chairman EASTLAND. Where did you practice?

Mr. STOREY. East Texas and Dallas, Tex.

Chairman EASTLAND. Where in east Texas?

Mr. STOREY. Beginning at Troup, Tex.; then later Tyler, Tex., which is the county seat. I started in a one-lawyer town, had to make a living from the beginning.

Chairman EASTLAND. What kind of practice did you do there?

Mr. STOREY. I have had a general practice, sir, individual and corporate, and our firm still handles general practice.

Chairman EASTLAND. You have been president of the American Bar Association?

Mr. STOREY. Yes, sir.

Chairman EASTLAND. How long have you been dean of Southern Methodist Law School?

Mr. STOREY. Since 1947. I might say it is supposed to be a part-time assignment, but that is my public service.

Chairman EASTLAND. Senator Ervin.

Senator ERVIN. I have no questions. I have known of Dean Storey by reputation for the great work he has done as a member of the American Bar Association. I am happy at his appointment to the Commission.

Mr. STOREY. Thank you, Senator Ervin.

Chairman EASTLAND. Senator Carroll?

Senator CARROLL. No questions.

Chairman EASTLAND. Senator Jenner?

Senator JENNER. I have no questions.

Chairman EASTLAND. Senator Dirksen?

Senator DIRKSEN. Dean Storey, you could not have helped but imbibe some great ideas from a great Texan who served as the chairman of the Judiciary Committee of the House of Representatives when I came here as a freshman Congressman 26 years ago, and I am referring to Hatton Sumners.

Mr. STOREY. I am sure you and I share your opinion, and may I say that he is living in our legal center in his declining years, and having a great influence on the young lawyers, not only of our State but from 30 nations of the world.

Senator DIRKSEN. I share your esteem for him.

Chairman EASTLAND. Father Hesburgh.

Father, you are president of Notre Dame University?

### STATEMENT OF FATHER THEODORE M. HESBURGH, NOMINATED TO BE A MEMBER OF THE CIVIL RIGHTS COMMISSION

Father HESBURGH. Yes, sir.

Chairman EASTLAND. Have you ever been in the practice of law?

Father HESBURGH. No. I have studied law, but I have never been in the practice of law. I did teach a course in jurisprudence once in law school.

Chairman EASTLAND. What do you conceive your duties to be if you are confirmed?

Father HESBURGH. I would think the portion of the law which we have discussed a great deal since the nomination, we think a large part of the problem is the factfinding problem, finding out what are the facts and the various things which are indicated here in the law, 1, 2, and 3, in the enumeration of the law.

Chairman EASTLAND. I know, but what is the meaning of No. 2?

Father HESBURGH. No. 2—I think all of these are quite broad. No. 2 we were just discussing again this morning. I think it normally means to look over all of the legal developments which are taking place in the country and relate them to this question of equal protection under the laws and the Constitution.

Chairman EASTLAND. What are legal developments? Court decisions, statutes of States?

Father HESBURGH. I would think so.

Chairman EASTLAND. Statutes of the Federal Government?

Father HESBURGH. Statutes, decisions of the States, of the Federal Government.

Chairman EASTLAND. When a thing happens such as happened at Little Rock, do you think the Commission would have jurisdiction to investigate it?

Father HESBURGH. It would seem unlikely. I think again it is a question of how far one would press this No. 2.

Chairman EASTLAND. Yes. But what is your judgment? How far would you want to press it? That is the question.

Father HESBURGH. I would think unless the Commission by some higher authority were called into this, that we would be unlikely to go into it by our own judgment.

Chairman EASTLAND. Well, now, some higher authority. What higher authority could call you in?

Father HESBURGH. I do not know, sir.

Chairman EASTLAND. They could not cause you to go beyond your duties, could they?

Father HESBURGH. I would not think so, Senator.

Senator McCLELLAN. May I inquire, Mr. Chairman, who would have the authority to call them into it?

Chairman EASTLAND. No one that I know of.

Senator McCLELLAN. That is what I am wondering. This Commission, when established, becomes its own boss. I do not think anybody has any authority to call you in to give you instructions.

Father HESBURGH. I did not know that, sir.

Senator McCLELLAN. I think you ought to know that. I thought this was to be an independent commission.

Chairman EASTLAND. That was the congressional intent, but you know those things are forgotten at times.

Senator McCLELLAN. I did not think there was any question about that. I did not know anyone had any idea someone could give them instructions what to do.

Chairman EASTLAND. What is the connection between the Commission and the Department of Justice? Is there any?

Father HESBURGH. I would think there is no direct—according to this law, as I read it, there is no connection.

Chairman EASTLAND. That is your judgment?

Father HESBURGH. That is my judgment.

Chairman EASTLAND. That there is no connection. The Justice Department does not have subpoena power.

Father HESBURGH. No.

Chairman EASTLAND. And you would not use those subpoena powers to gather information to turn over to the Department of Justice?

Father HESBURGH. I would think there is no connection whatever the way the law is written.

Chairman EASTLAND. I would like to ask you this question: Do you believe in racial integration? Do you believe in segregation? Just what are your views?

Father HESBURGH. I think I would say that I believe what the Constitution says, that all people are created with equal rights under the Constitution and the law.

I suppose the great problem of the whys, the wherefores, and the hows, comes under equal rights.

Chairman EASTLAND. Yes. But do you think that as far as the Federal Government is concerned, and as far as the Commission is concerned, that is State action under the 14th amendment?

Father HESBURGH. Could I have that again, sir?

Chairman EASTLAND. I say that any action of the Federal Government would have to be aimed at an action of a State under the 14th amendment rather than acts of individuals.

Father HESBURGH. I think I would agree with you on that, sir.

Chairman EASTLAND. Senator Ervin?

Senator ERVIN. Father, I have been very much concerned about what is about to happen to our system of government, largely as a result of agitation about matters of race. Frankly, I think that we

have had so much constant agitation about matters of race lately that our national sanity has been to a very substantial degree impaired.

If anyone had told me before the last session of Congress that the administration would recommend that Congress enact a law depriving some Americans of the right of trial by jury, I would not have believed it possible.

I think that the shortest definition of the Constitution of the United States that has ever been spoken was that of Chief Justice S. P. Chase, of Ohio, in which he said that the Constitution and all of its provisions look to an indestructible union composed of indestructible States, and I would like to know whether you agree with me in the observation that it is just as important to preserve the sovereignty of the States as it is to preserve the sovereignty of the Federal Government in their proper fields.

Father HESBURGH. I think this has been the whole genius of the United States: that the States within their rights have had their autonomy, and the Federal Government within its area has had autonomy, but somehow we have been a union of sovereign States.

Senator ERVIN. There is one thing which troubles me about the Commission. I am like Senator Robertson of Virginia. I opposed the creation of the Commission. I am frank to state I have been pleased by the caliber of the men who have been selected for membership upon it, and I think you all have one of the most important duties that have ever been placed upon the shoulders of any group of Americans, and it is in this field that a great many people—you take the question of the equal protection under the law. The duty afforded under the equal protection of the law is a duty which primarily rests upon the States of the Union; and, to me as an American who loves our constitutional and legal system, I cannot think of any greater harm that could be done to it than would be for the Federal Government to enact legislation which would in effect appoint any Federal official, as was attempted in the civil-rights bill last year, appoint him a supervisor of all of the actions of all of the States and of all of their subdivisions, because, whenever you do, I think our system of government in America as we have known and loved it is gone.

And so I think you all have the most serious responsibility that I have ever known to be imposed upon six men.

Father HESBURGH. I agree, sir. We have a very difficult job, and I think we face it with a great deal of humility.

Senator ERVIN. My own personal opinion about so many racial questions, I think most of them like all human problems can only be solved on the local level where people live and move and have their being. Solution to such problems cannot be dictated from above by any governmental powers.

Father HESBURGH. Thank you, sir.

Chairman EASTLAND. Senator McClellan?

Senator MCCLELLAN. Mr. Chairman, I have not been able to be present and I do not know whether any of these gentlemen have been asked about this subject or not.

As I understand it, your position in this is simply a factfinding body.

Father HESBURGH. I think that is the points which are brought out under the law here, that we are to study and collect information

regarding legal developments and appraise the laws and policies of the Federal Government. These are the two big points.

Then, of course, investigate allegations in writing, backed under oath, on voting rights.

Those are the three things.

Chairman EASTLAND. Do you think that is aimed at any particular section of the country?

Father HESBURGH. I really do not know what the intent of the lawmakers was on that, Senator. I think any American would say that there are problems in regard to race all over this country.

Chairman EASTLAND. Do you favor investigating them all over the country?

Father HESBURGH. Yes. I think they have to be taken as they come.

Senator McCLELLAN. I yield for a moment if someone else wishes to question. I want to look at the act a moment.

Senator DIRKSEN. Mr. Chairman, could I address one question to Dr. Hannah?

I presume in the nature of things, the Commission could not mark out too much of its domain prior to confirmation and to setting the organizational structure and pattern of the Commission; is that right?

Mr. HANNAH. That is correct.

Senator DIRKSEN. So that there is still a lot of work to be done and a lot of study and discussion and conferring before you actually settle down to a pattern of what you really will do under this statute.

Mr. HANNAH. Yes. There have been two uncertainties. One, the confirmation of the individual members of the Commission. There has been some question in the minds of some of the members whether they were going to be confirmed.

Secondly, they have had the problem of the selection of the staff director, and as I indicated in my opening remarks, now that that one has been resolved, of course subject to confirmation, we have confined ourselves (1) to the selection of the staff director and (2) to some very tentative notions as to what our field is under the legislation.

Senator DIRKSEN. Mr. Chairman, if I may be allowed, pursuant to the observations by my good friend, Senator Ervin, Father Hesburgh, I do not know whether you were around when we discussed the so-called jury trial amendment in the Senate, but I would say as a guess probably 65, maybe 70 Members of the Senate are lawyers, and to me it is one of the most fascinating things in the world how 70 lawyers or more can differ, one with another, about interpretations, traditions, what is contained in the statute today, Anglo-Saxon derivations, and everything that had any impact upon jury trials at all.

So I just wanted to deliver that as a footnote, because I apprehend the Commission will have its differences in that field no less than we did in the Senate.

The amazing thing about it was—maybe not so amazing, after all—that it was done with the greatest of felicity, and I think it was a constructive discussion in every respect. I pay particular compliment to the very distinguished lawyer on this committee, and at one time a member of the Supreme Court of his State, Senator Ervin, at whose feet I fairly throw myself as just a country lawyer, because I always bow to superior juridical reasoning.

Senator ERVIN. Mr. Chairman, I want to thank Senator Dirksen, and want to comment, I think if you will follow me on these propositions that he will walk in the right way.

Chairman EASTLAND. There is no doubt about that. He will need some guidance all right.

Senator DIRKSEN. Of course, we did not agree with each other distinguished justice very much in the committee, but we still paid respect and put the accolade on his altar as a great lawyer and as a great judge.

Senator McCLELLAN. I just would like to ask the witness this: From your study and understanding and interpretation of subparagraphs (2) and (3) of section 104, do you think they are sufficiently broad to enable this Commission to develop the facts and information regarding one being denied the right to gain full employment?

Father HESBURGH. I think it would depend entirely on how far one stressed the four words here, "denial of equal protection" of the laws under the Constitution.

I think all of us, if I could answer this on perhaps a more general thing which I am sure is in your mind, too, Senator, as we discussed this this morning, it is a rather broad statement, and I would think our general impression, if I might speak just for myself and the group for a moment, is that we should do what is apparently on the surface here. This at least is what should be done by the Commission, and that is the immediate thing that we should concern ourselves with.

Senator McCLELLAN. I am engaged in a little work along with some of my colleagues at present—

Father HESBURGH. I understand you are.

Senator McCLELLAN. Where we get a good many letters from people claiming they are denied the right to work. They probably belong to a union for a while, and then they get expelled for some reason, because they criticized the present officials of their local or some trustee has been appointed over them, and they are expelled and denied the right to work because they are not union members.

Would you think that comes within the category of rights denied under the law?

Father HESBURGH. It certainly seems if you take the law in its broadest sense, the right to the pursuit of life, liberty, and the pursuit of happiness—and that involves making a living—it is possible to make that interpretation.

Senator McCLELLAN. Do you know, aside from the right to worship according to the dictates of conscience, do you know a higher civil right than that to earn a living?

Father HESBURGH. No. This is basic to all our other rights, because you have to eat before you act as a human being.

Senator ERVIN. As I construe the recent decision of the Supreme Court of the United States and the old decision, the decision of the Supreme Court of the United States holding in effect that the due process clause of the 14th amendment prevents any State from depriving any man of the right to pursue any of the ordinary innocuous occupations of life, whereas on the contrary the due process clause of the 5th amendment permits the Federal Government to do exactly, to authorize the doing of exactly what the due process clause of the 14th amendment prohibits the States from doing, if you get your other problems solved I wish you would try to reconcile those decisions.

Father HESBURGH. There will be no end to problems, I am sure of that.

Chairman EASTLAND. Senator McClellan?

Senator McCLELLAN. Nothing further.

Chairman EASTLAND. Senator CARROLL?

Senator McCLELLAN. I would like, Mr. Chairman, if I may—I cannot be present as I have got to go to another meeting—I would like for each one of the Commissioners to be asked, each one of the nominees to be asked with respect to the interpretation of these two provisions if they are broad enough to include the right of gainful employment. I have no further questions.

Chairman EASTLAND. Senator Holland is out of the city and desires permission to file a statement in support of the nomination of Governor Carlton. Is there objection?

We will hold the record open until he has returned.

(Subsequently Senator Holland's letter dated February 25, 1958, was received and is printed herewith:)

UNITED STATES SENATE,  
COMMITTEE ON APPROPRIATIONS,  
February 25, 1958.

HON. JAMES O. EASTLAND,

*Chairman, Committee on the Judiciary,  
United States Senate, Washington, D. C.*

MY DEAR SENATOR: I strongly support the nomination of Hon. Doyle E. Carlton, a former Governor of the State of Florida, to be a member of the Commission on Civil Rights, and I request that this letter be printed in the committee hearings on his nomination.

The character of this man, his educational background, his outstanding public service through the years, his keen mind, and his sense of fair play well qualify him to serve as a member of this Commission.

Governor Carlton has an A. B. degree from Stetson University, Deland, Fla., an A. B. degree from the University of Chicago, and an LL. B. from Columbia University. He has had honorary degrees bestowed on him by the University of Florida, Florida Southern College, Tampa University, and the University of Chicago.

His outstanding public service includes service in the Florida State Senate from 1917 to 1919 and as Governor of the State of Florida from 1929 to 1933. He served two terms as president of the Florida State Chamber of Commerce and now serves as vice chairman of the board of trustees of Stetson University.

The city of Tampa, Fla., where he once served as city attorney, chose Governor Carlton as the outstanding citizen of Tampa in 1956, and he is truly one of Florida's most outstanding citizens.

Governor Carlton is a member of the Florida bar and is presently a senior partner in the law firm of Mabry, Reaves, Carlton, Fields & Ward, of Tampa.

In my opinion, the Nation is fortunate that such a man as Doyle E. Carlton is willing to make great personal sacrifice to serve on the Civil Rights Commission, and I urge your committee to report favorably his nomination as speedily as possible.

With kind regards, I remain,

Yours faithfully,

SPESSARD L. HOLLAND.

Chairman EASTLAND. Senator Carroll.

Senator CARROLL. Father, have you read the debates in the Congressional Record about this bill which created the Commission?

Father HESBURGH. I read a good deal of them. I do not think I have read every last one, but I did read a great deal of them.

Senator CARROLL. Is there any doubt in your mind that one of the functions of this Commission is to investigate the right to vote?

Father HESBURGH. No, I think this is the No. 1 thing mentioned.



Senator CARROLL. That is the primary purpose in the creation of this Commission.

Father HESBURGH. I think I understand that, Senator, in the sense that it is the No. 1 thing mentioned down here.

Senator CARROLL. That is all, Mr. Chairman.

Chairman EASTLAND. Senator Jenner?

Senator JENNER. I have no questions.

Chairman EASTLAND. Senator Dirksen.

Senator DIRKSEN. Father, I was going to observe you would have to take sabbatical leave for a year and do nothing else to read all those debates.

Senator JENNER. Do you think he could do it in a year?

Senator DIRKSEN. No.

Father HESBURGH. Thank you very much, Senator.

Chairman EASTLAND. Doyle E. Carlton.

Senator ERVIN, any questions?

Senator ERVIN. You are a former Governor of Florida?

#### STATEMENT OF DOYLE ELAM CARLTON, NOMINATED TO BE A MEMBER OF THE CIVIL RIGHTS COMMISSION

Mr. CARLTON. Yes, sir.

Senator ERVIN. And are now a practicing attorney?

Mr. CARLTON. Yes, sir.

Senator ERVIN. What is your idea about State action?

We have an act of Congress which was passed in Reconstruction days which says in effect—these are not the exact words—that whenever a mob takes charge of things, and the State either refuses or is unable to enforce law and order against the mob, that the mob shall be deemed to be acting for the State. Do you think that that statute could be reconciled with the 14th amendment?

Mr. CARLTON. I think the obligation of enforcing the law rests with the State in matters of that sort.

Senator ERVIN. In other words, is it your understanding, Governor, that when the 14th amendment refers to State action, that it refers to action by the duly constituted officials of the State, either executive, legislative, or judicial?

Mr. CARLTON. Yes, sir.

Senator ERVIN. And do you believe that the coverage of the 14th amendment can be extended by the Congress passing a statute which utters a falsehood like the one I have just called your attention to, that is that the action of the mob shall be deemed to be action of the State? Do you think you can extend the coverage of the Constitution in that way?

Mr. CARLTON. That is a very difficult question. I don't know whether you would or not.

Senator ERVIN. But can you conceive of the action of a mob being legally the action of the State within the purview of the 14th amendment?

Mr. CARLTON. Certainly not. I misunderstood your question.

Senator ERVIN. I was struck by reading an article in a law magazine which advanced the theory that if a mob took charge of things, that it could justifiably be deemed to be action of the State.

Chairman EASTLAND. Be aiding the State.

Senator ERVIN. Be action of the State. I'm glad you concur with me in the opinion that Congress cannot extend the coverage of the 14th amendment by uttering a legislative lie. That is the only way I can put it.

Thank you.

Chairman EASTLAND. Senator Carroll.

Senator CARROLL. Governor, if the State by its election laws sets up a procedure which deprives citizens of their right to vote, do you think that that is subject to interference by the Federal Government? Perhaps to clarify this, there is in Louisiana in a certain parish—this was in the record in this debate—where in a certain county there was a system, a procedure whereby registration was not permitted to a certain group of American citizens.

A three-man Federal court held over the objection of an attorney general whose argument was in effect that the Federal Government had no right to interfere with State election laws with reference to the voting rights of individuals of that State.

The three-man Federal court held that the Federal laws did have a right and were supreme. Do you have a conviction on that?

Mr. CARLTON. It certainly would be supreme in those matters relating to Federal offices. Just how far it could go on others, I wouldn't say.

Senator CARROLL. But you do think there is an area in which the Federal Government has jurisdiction?

Mr. CARLTON. Oh, certainly.

Senator CARROLL. That is all.

Chairman EASTLAND. Senator Jenner?

Senator JENNER. I have no questions.

Chairman EASTLAND. Senator Dirksen?

Senator DIRKSEN. No questions.

Chairman EASTLAND. J. Ernest Wilkins of Illinois.

Senator Ervin.

Senator ERVIN. You were a practicing lawyer before you were connected with the Department of Labor, I believe?

#### STATEMENT OF J. ERNEST WILKINS, NOMINATED TO BE A MEMBER OF THE CIVIL RIGHTS COMMISSION

Mr. WILKINS. Yes, Senator.

Senator ERVIN. What is your view with reference to State action within the purview of the 14th amendment?

Mr. WILKINS. Senator, do you have any objection to making that a little clearer?

Senator ERVIN. All of the decisions of the Supreme Court up to date so far as I can construe them in interpreting the 14th amendment have said that State action was action taken by either the executive or judicial or legislative branches of government or the subdivisions of the State government, and there are some people lately advancing the theory that whenever the mob takes charge of things, that the action of the mob should be construed to be State action. I just wondered what your opinion about that is as a lawyer.

Mr. WILKINS. Of course I would have to have all the facts before I was one to hand down a decision in any kind of a case. Just taking it superficially off the cuff, I would say it was not State action.

Senator ERVIN. I think you all have a very serious problem. I do not know, as I said, any six men who have had a more serious problem thrust upon them. I was very much against the civil rights bill in the last session of Congress because I think that the important thing for this country is to preserve the constitutional and legal systems for the benefit of all Americans of all races and all generations, and I do not believe that we can preserve that kind of system by denying some Americans civil rights in order to confer civil rights on others.

Mr. WILKINS. I would agree with you, Senator, that rights should be extended to all American citizens, irrespective of race, color, religion or national origin. I would agree with you wholeheartedly on that.

Senator ERVIN. What is your view with reference to the necessity of preserving the States as well as the Federal Government?

Mr. WILKINS. Well, we operate under a Federal-State system. Obviously unless we do preserve our States we might lose the Federal system itself.

Senator ERVIN. There is no question about that in my mind and that is the thing that concerns me about a lot of this agitation about civil rights is so many people have so many different remedies, many of which would consist of complete subordination of the activities of the State to Federal control.

Mr. WILKINS. I would say, Senator, in the field of civil rights, I suppose you would find as many opinions as you find individuals.

Senator ERVIN. I think that is true. That is all.

Chairman EASTLAND. Senator Carroll?

Senator CARROLL. No questions.

Senator JENNER. I have no questions.

Chairman EASTLAND. Senator Dirksen?

Senator DIRKSEN. I have no questions except to add one observation. I remember when Mr. Wilkins came to Washington under this administration, and I have always been delighted by the superb way in which you have acquitted yourself in carrying on a great many responsibilities both on the domestic front and in connection with your duties as Assistant Secretary of Labor for International Affairs with particular reference to the work you have done in the field of the International Labor Organization.

Mr. WILKINS. Thank you, Senator.

Senator DIRKSEN. I think you deserve high commendation for the work you have done.

Mr. WILKINS. Thank you, Senator.

Chairman EASTLAND. Dr. Hannah?

Senator ERVIN, proceed.

Senator ERVIN. I do not know that I have any questions to ask Dr. Hannah except I am concerned with the State and the Federal relation very much and I think it is exceedingly important for you all to do what you can to preserve the proper relation and to say further as I have said before, I think you all have about the most tremendous responsibility I have ever seen imposed upon the shoulders of six men. That is all.

Mr. HANNAH. We recognize the seriousness of the responsibility, and as I indicated in my opening statement, there is a sincere desire

on the part of each member of the Commission to do the best we can to discharge this responsibility and be good for the country.

Chairman EASTLAND. What is your responsibility?

Mr. HANNAH. My responsibility of course as Chairman of the Commission, the only difference in my responsibility and that of the Commissioners——

Chairman EASTLAND. What do you consider to be your legal responsibilities as a member of this Commission?

Mr. HANNAH. Section 1 is very clear.

Chairman EASTLAND. No. 2 is what I want.

Mr. HANNAH. No. 2, as I view it, is largely a research responsibility to provide a staff, to check information concerning legal developments, and in line with questioning that has been directed at other members of the Commission, while I am not a lawyer, I did not know Father Hesburgh had studied law, I think I am the only member of the Commission who does not have legal training, it would be my interpretation that this includes enactments by the Federal Government or the State legislatures or court decisions.

Chairman EASTLAND. And that is all?

Mr. HANNAH. That is right.

Chairman EASTLAND. It would not give you the authority to go in and investigate Little Rock occurrences?

Mr. HANNAH. That is not in our field.

Chairman EASTLAND. Senator Carroll?

Senator CARROLL. Doctor, one of the reasons I asked Father Hesburgh whether he had read the record, we have had this under consideration for months. We debated it for about 3 months, but I think actually about 30 days.

I agree with Senator Dirksen it would take a long time to read all of the record. There are great differences of opinion among certain of the Senators on this very important piece of legislation.

For example, I had a strong viewpoint on some of these issues, but actually when we finished we came up with what we thought was a reasonable compromise and it is a part of this compromise really that this Commission is going to do this important work on, and actually what started out to have seriously interfered with Congress itself and our relationship with one another, but we ended up with considerable harmony although we have strong areas of disagreement, and I think the questioning here today has emphasized the necessity of the right to vote, and the other field on which the Chairman has expressed himself, and other members.

I do not know whether this has been put into the record.

What sort of a staff will you need immediately?

How much of a staff will you need?

Mr. HANNAH. There has been some tentative discussion. The exact number, of course, has not been determined because we have thought that the amount, the quantity of staff required and the quality should wait until we have the staff director confirmed and on the job.

We are thinking tentatively of a staff of 10 or a dozen top attorneys probably to do the research work that will be involved both in 1, 2, and 3, also.

While we have a tentative organizational pattern that has been discussed, it was very tentative and we have no fixed notions of the exact number of staff or the exact qualifications of the staff.

Senator CARROLL. I just wondered about how long it would take to get into action, that is what I had in mind.

Mr. HANNAH. That has been one of our concerns because we had our organizational meeting the third of January and it is now the 24th of February.

It is our hope that the Senate will confirm the appointment of Mr. Tiffany at an early date, and we are ready to go. We have our space arrangement. We have the arrangements made with the General Services Administration and all of the technical detail, housekeeping, has been taken care of as far as we could go until we have the staff director and are ready to take off.

Senator JENNER. I have no questions, Mr. Chairman.

Chairman EASTLAND. Senator Dirksen?

Senator DIRKSEN. President Hannah, you have had other assignments in the Federal Government, have you not?

Mr. HANNAH. Yes, sir.

Senator DIRKSEN. Could you recite briefly for the record what they were?

Mr. HANNAH. I was an Assistant Secretary of Defense for Manpower for 19 months in 1954 and 1955, I guess in the beginning of the Eisenhower administration.

I was a member of the International Development Advisory Point 4 Board in the Truman administration.

I continued to be the United States Chairman of the Permanent Joint Board for Defense for Canada and the United States and have last year accepted the responsibility of the Foreign Relations Committee to make a study of foreign aid in the Far East and have performed various other chores of one kind and another.

Senator DIRKSEN. Administrative and budget complexities are not a completely unknown field?

Mr. HANNAH. I think that is right.

Of course a university is a sizable operation—financial operation these days. We have 20,000 students and a budget of \$50 million a year.

Senator DIRKSEN. That is all, Mr. Chairman.

Chairman EASTLAND. Mr. Young.

Mr. YOUNG. Dr. Hannah, I would like to ask you a few questions if I may. In your preliminary meetings have you made any arrangements or discussed what liaison you will have with the Department of Justice in the working out of this bill with the duties of the Department of Justice Civil Rights Division?

Mr. HANNAH. We have made no decisions. It is my understanding that we were to operate completely separated from the Department of Justice. In the preliminary meeting that the Commission had in the White House with the President on January 3, and following that meeting, I don't know whether it was said there or a subsequent meeting in the President's presence or subsequently whether it was generated by the Commission or something that somebody else told us, but it is our feeling that we have no interlocking responsibility at all.

Chairman EASTLAND. Now, are you subject to the instructions from some high authority now as a member of this Commission, as the Chairman?

Mr. HANNAH. No, sir.

Mr. YOUNG. Doctor, there has been some fear that the Commission will use itself as an investigatory body for the benefit of the Department of Justice under certain circumstances. This bill here is divided into a number of parts, the first part of which establishes the Commission. The second part establishes a new Attorney General in the Department of Justice who will be in charge of the Civil Rights Division. The third and fourth parts empower the Attorney General to get the injunctions under certain circumstances and try for contempt if they are not carried out.

Now, the Department of Justice lacks the subpoena power which is of great investigatory importance. The Commission has the subpoena power. Now, if you will look at section 105 (f) of the existing law, Public Law 85-315, you will see there that the Commission may hold hearings and use its subpoena powers for the carrying out of the provisions of this act, which includes the duties of the Department of Justice in injunction suits in the rest of the bill. You will also see under section 104 (a), which are your duties, a mandatory provision, the use of the word "shall" in cases of equal protection of laws which would cover the 14th amendment. It is obligatory upon you to go in and act as a Commission.

Now, in the case where the Department of Justice has secured an injunction for violation of civil rights, in the equal protection field under the 14th amendment, it is obligatory upon you as a Commission to act under this bill and find your facts and your information. Then it is permissive under (f) for you to use your subpoena powers to bring in all the facts and records to carry out your duties under 104 (a) (2). Because of that interrelation of this Commission with the remaining portions of this bill, namely, the Department of Justice in the civil-rights field, there has been a fear that you will use your Commission as a factfinding body for the benefit of the Department of Justice, especially in certain circumstances.

Mr. HANNAH. Well, again, it is not my feeling that we should be used as a tool for such. To prevent people from having fears, I think I might say this, which would shed some light on the relationship. When we were meeting early in January to come up with a nominee for the staff directorship that we could all agree upon—we thought that was our No. 1 responsibility because I am sure you recognize from the background testimony of these people, we have a wide range of attitudes on this whole matter, relations in civil rights, and we thought we were going to get exactly nowhere unless we could come up with a staff director about whom we had no reservations, that was equally satisfactory to all of us, and not being quite as quick, possibly, as I should have been in recognizing this possible fear of interrelationships between the Department of Justice and this Commission, I called Mr. Rogers, the Attorney General, to ask if he had any suggestions and his quick response was that he thought it would be a serious mistake if there was any relationship between the Attorney General's Office and this Commission. I, not having thought about it, assumed he probably was right, and I didn't go any further.

So I can only say that while I didn't know of this fear, the new Attorney General indicated that he thought that would be a serious mistake and had no suggestion to make.

Mr. YOUNG. Well, it is this. You are tied in by law with the rest of this bill which includes extraordinary remedies of injunction with contempt proceedings which are used by the Department of Justice in the civil-rights field under existing statutes. And you, unfortunately, and the Commission under this act, as I see it, by the use of these very words and the mandatory provision of the word "shall" in 104, are required to act in the same field that the Civil Rights Division of the Department of Justice is. You have the subpoena powers and they do not, you see.

Mr. HANNAH. It is my feeling that we should use the subpoena power to gain the information that we need to carry out our responsibilities.

Chairman EASTLAND. That is right.

Mr. HANNAH. But I personally would reject the notion that we should be used—that the subpoena power should be used by us to gain information for any other agency of the Government. That would be my personal feeling.

Mr. YOUNG. Well, we might point it up—I appreciate your answer, Doctor. I might point it up in the Little Rock case, that if this law had been on the statute books at the time of the Little Rock affair, an injunction being in existence at that time involving segregation which is under the protection of the 14th amendment, this bill, as I see it, would require you to act on the word "shall" and investigate Little Rock.

Now, using your subpoena powers, and they would be open hearings, and the Department of Justice would audit those hearings, the FBI which investigated down there was without the subpoena power. You would have it. The tie-in is there and some people have been concerned about it.

Mr. HANNAH. Well, again, not being an attorney, I will defer to the able attorneys on the Commission and the Staff Director to interpret the point that you are making. I have strong views, as I have already stated, that we should not be used as a tool for any other agency.

Chairman EASTLAND. Any further questions, gentlemen?

We will adjourn.

(Whereupon, at 4:55 p. m., the committee adjourned.)

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